Supreme Court, U.S.
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No. 92-1239

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

J. E. B.,
Petitioner,

v.

T. B.,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. HAS PETITIONER PRESENTED ANY REASON UNDER RULE 10 TO JUSTIFY THIS COURT'S GRANTING CERTIORARI?

2. HAS PETITIONER SHOWN THAT MALES ARE A "COGNIZABLE GROUP" TO WHOM THE PRINCIPLES OF *BATSON V. KENTUCKY* SHOULD APPLY?

PARTIES TO THE PROCEEDING

Petitioner: *James E. Bowman, Sr.*

Respondent: *State of Alabama ex rel. Teresia Bible*

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED FOR REVIEW . i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS..... iii

TABLE OF AUTHORITIES v

CITATIONS OF OPINIONS AND JUDGMENTS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISION 2

STATEMENT OF THE CASE..... 2

i. COURSE OF PROCEEDINGS AND DISPOSITIONS IN THE COURT BELOW..... 2

ii. STATEMENT OF THE FACTS..... 4

SUMMARY OF ARGUMENT 6

ARGUMENT 7

I. PETITIONER HAS NOT PRESENTED ANY REASON UNDER SUPREME COURT RULE 10 TO JUSTIFY THE GRANTING OF A

WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA 7

II PETITIONER HAS NOT SHOWN THAT MALES ARE A "COGNIZABLE GROUP" TO WHOM THE PRINCIPLES OF *BATSON V. KENTUCKY* SHOULD APPLY 12

CONCLUSION 16

PROOF OF MAILING AFFIDAVIT 17

APPENDIX: 19

APPENDIX A—
ORDER OF TRIAL COURT 1a

APPENDIX B—
FINAL ORDER OF TRIAL COURT 4a

APPENDIX C—
OPINION OF COURT OF CIVIL APPEALS 6a

TABLE OF AUTHORITIES

Case **Page**

Batson v. Kentucky, 476 U.S. 79, 90 L.Ed. 2d 69, 106 S.Ct. 1712 (1986) 12, 13

Daniels v. State, 581 So.2d 536 (Ala.Cr.App. 1990), *cert. denied*, 581 So.2d 541 (Ala. 1991). 9

Dysart v. State, 581 So. 2d 541 (Ala.Cr.App. 1990), *cert. denied*, 581 So.2d 545 (Ala. 1991). 9

Edmonson v. Leesville Concrete Company, 500 U.S. __ ,114 L.Ed.2d 660, 111 S.Ct. 2077 (1991) 14

Fisher v. Alabama, __ U.S. __ 117 L.Ed.2d 628, 112 S. Ct. 1486 (1992) 10

Fisher v. State, 587 So.2d 1027 (Ala.Cr.App. 1991), *cert. denied*, 587 So.2d 1039 (Ala. 1991) 9, 10

Murphy v. Alabama, 506 U.S.___, 121 L.Ed. 2d 49, 113 S.Ct. 86 (1992) 10

Murphy v. State, 596 So.2d 42 (Ala.Cr.App. 1991), *cert. denied, Ex parte Murphy*, 596 So.2d 45 (Ala. 1992) 9, 10

Pate v. State ex rel. Corkren, 526 So.2d 30 (Ala.Civ.App. 1988) 11

Powers v. Ohio, 499 U.S. ___, 113 L.Ed.2d 411, 111 S.Ct. 1364 (1991) 14

Stariks v. State, 572 So.2d 1301 (Ala.Cr.App. 1990) 9

U. S. v. De Gross, 913 F.2d 1417 (9th Cir. 1990) 8

U.S. v. Dennis, 804 F.2d 1208 (llth Cir. 1986), *cert. denied, Dennis v. U.S.*, 481 U.S. 1037, 95 L.Ed.2d 814, 107 S.Ct. 1973 (1987)..... 12, 13

U.S. v. Hamilton, 850 F.2d 1038 (4th Cir. 1988), *cert. denied, Hamilton v. U.S.*, 493 U.S. 1069, 107 L.Ed.2d 1017, 110 S.Ct. 1109 (1990) 12

U.S. v. Nichols, 937 F.2d 1257 (7th Cir. 1991), *cert. denied, Nichols v. U.S.*, ___ U.S. ___ , 117 L.Ed.2d 151, 112 S.Ct. 989 (1992) 12

Constitution and Statutes

28 U.S.C. § 1257(a) 2

Code of Alabama 1975, § 26-17-1 *et seq* 11

Code of Alabama 1975, § 26-17-6 11

Other Authorities

Rule 10.1 of the Rules of the Supreme Court . 7, 8

Rule 39, Alabama Rules of Appellate Procedure..... 9

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

J. E. B.,
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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

CITATIONS OF OPINIONS AND JUDGMENTS BELOW

The opinion of the Court of Civil Appeals and the denial of certiorari by the Alabama Supreme Court are cited as *J. E. B. v. State of Alabama ex rel. T. B.*, 606 So.2d 156 (Ala.Civ.App. 1992).

JURISDICTION

The Petitioner has invoked the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(3). The Respondent notes that 28 U.S.C. § 1257 was amended in 1988, and no longer contains a

paragraph (3). This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a). The opinion of the Court of Civil Appeals was issued on June 5, 1992. Rehearing was denied on July 17, 1992, and the Alabama Supreme Court denied the Writ of Certiorari on October 23, 1992. Petitioner filed his Petition for a Writ of Certiorari on January 21, 1993, seeking a writ of certiorari to the Alabama Supreme Court, apparently to require that court to grant certiorari to the Alabama Court of Civil Appeals.

CONSTITUTIONAL PROVISION

Petitioner claims that his right to equal protection of the laws provided by the Fourteenth Amendment to the United States Constitution have been violated.

STATEMENT OF THE CASE

i. Course of Proceedings and Dispositions in the Court Below

This action originated on October 20, 1989, when the State of Alabama ex rel. Teresia Bible filed a paternity action in the District Court of Jackson County, Alabama. The Complaint for Paternity and Child Support alleged that James Edward Bowman, Sr. is the father of Phillip Rhett Bowman Bible, born May 16, 1989. The result of a blood test requested by the Defendant showed a cumulative probability of paternity of 99.92% and a cumulative paternity index of 1,324 to 1. Following

a hearing the district court issued an order on October 22, 1990, establishing paternity and setting an amount of child support.

Following post-judgment proceedings the Defendant filed a notice of appeal to the circuit court for a trial de novo and a jury trial. The Defendant also filed a motion to add one Ricky Stone as a third party defendant to the cause. After a blood test, the result of which indicated that it was genetically impossible for Ricky Stone to be the father of the child, the trial court denied the defendant's motion to add him as a party.

Following the trial, which was held on October 21 and 22, 1991, a jury verdict was returned in favor of the Plaintiff. Based on that verdict the trial court entered an adjudication of paternity on October 23, 1991. A copy of that order is attached as Appendix A. Following a separate hearing before the court, a final order fixing an amount of child support was entered on November 8, 1991. A copy of that order is attached as Appendix B.

On appeal to the Alabama Court of Civil Appeals, that court issued an opinion on June 5, 1992, affirming the judgment of the trial court. A copy of the Opinion of the Court of Civil Appeals is attached as Appendix C.

The Petitioner's Application for Rehearing was overruled by the Court of Civil Appeals on July 17, 1992. The Petitioner's Petition for Writ of Certiorari to the Court of Civil Appeals was denied

by the Alabama Supreme Court on October 23, 1992.

ii. Statement of the Facts

The venire from which the jury was selected in this case consisted of thirty-six people, of whom twenty-four were female and twelve were male. Two men and one woman were excused for cause by the court, leaving twenty-three women and ten men from whom to choose a jury. The parties struck by turns, and the State used its fourth strike to remove a woman from the jury, but used its other nine strikes to eliminate men. The Petitioner used his first ten strikes to eliminate women from the jury, and used his eleventh strike to eliminate the one remaining male. The jury form, showing the strikes, was entered into evidence by the Petitioner.

Following the striking of the jury, the Petitioner challenged the State's strikes based on *Batson v. Kentucky*, which he stated that he understood was applicable to gender-based strikes as well as to strikes based upon race. (R. 35-36.) He also stated that the venire was made up of approximately 75% women. (R. 36.) The trial court stated that there had originally been sixty-two persons in the venire and that the court had instructed the clerk to take every other name until the venire was down to thirty-six. The court then overruled the Defendant's challenge of the State's jury strikes. (R. 37.)

It was uncontested at trial that the Petitioner and Ms. Bible began an intimate relationship in February 1988. (R. 44-45, 153-154.) Ms. Bible stated that this relationship was continuous through August 14, 1988. (R. 47.) Mr. Bowman maintained that he was not intimate with Ms. Bible during June and July of 1988, although he had lunch with her and talked to her on the telephone during those months. (R. 157.) However, he acknowledged that he stayed in a motel with her continuously from August 9 through August 14, 1988 and had intimate relations with her during that time. (R. 159-162.) He also acknowledged taking Ms. Bible to the doctor after she informed him that she thought she was pregnant. (R. 163.)

The laboratory supervisor of the University of Alabama at Birmingham Immunogenetics/DNA Diagnostic Laboratory, Dr. Leigh Ann Harman, testified extensively with regard to the blood tissue testing which her laboratory conducted on Ms. Bible, Mr. Bowman, and the child. (R. 85-145.) During that testimony Dr. Harman stated that the cumulative probability of paternity in the present case is 99.92% that Mr. Bowman is the father of the subject child, based upon a fifty-fifty chance that the parties actually had intercourse. If the likelihood of sexual intercourse were increased, it could raise the probability of paternity as much as one percentage point higher. However, it could not go higher than around 99.99%. She also stated that the cumulative paternity index in this case was 1,324 to 1. (R. 125-126.)

Following the trial the jury returned the following verdict:

> We, the jury, find the issue in favor of the State. We find that Defendant James E. Bowman, Sr. is the father of the child, Phillip Rhett Bowman Bible.
>
> /s/Teresa L. Forrest
> Foreperson

After the entry of judgment, the Petitioner filed a post-judgment motion in which he claimed, among other things, that the State's elimination of men from the jury violated his "right to equal protection of the law as guaranteed by the Fifth Amendment of the United States Constitution." The trial court, relying upon the Opinion of the Alabama Court of Criminal Appeals in *Murphy v. State*, 596 So.2d 42 (Ala.Cr.App. 1991), as to that issue, denied the post-judgment motion. The Alabama Court of Civil Appeals, citing the Alabama Supreme Court's denial of certiorari in *Ex parte Murphy*, 596 So.2d 45 (Ala. 1992), affirmed the trial court's judgment. The Alabama Supreme Court denied certiorari in the present case on October 23, 1992.

SUMMARY OF ARGUMENT

Petitioner has not presented any reasons under Rule 10 to justify the granting of the writ. Petitioner has not shown that males are a "cognizable group" entitled to protection under *Batson v. Kentucky*.

ARGUMENT

I. PETITIONER HAS NOT PRESENTED ANY REASON UNDER SUPREME COURT RULE 10 TO JUSTIFY THE GRANTING OF A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA.

Supreme Court Rule 10.1 provides as follows:

> A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
>
> (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such

a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.

(c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

The Petitioner claims as his only ground under the rule that the holding in this case, which was reached by the Alabama Court of Civil Appeals, conflicts with the 9th Circuit Court of Appeals decision in *U.S. v. De Gross*, 913 F.2d 1417 (9th Cir. 1990).[1] However, he does not show any special or important reason why this Court should grant certiorari in the present case to resolve that alleged

[1] The Supreme Court of Alabama, Alabama's court of last resort, has not addressed the federal question raised here, but has simply declined to address it, denying certiorari in each case.

conflict, or to require the Alabama Supreme Court to do so. The granting or denial of certiorari to the Alabama Court of Civil Appeals is discretionary with the Alabama Supreme Court. See Rule 39, Alabama Rules of Appellate Procedure. The petitioner is not entitled, under this Court's Rule 10.1, to seek certiorari to require the Alabama Supreme Court to reverse its decision denying certiorari.

Petitioner cites a series of cases in which the Alabama Court of Criminal Appeals has declined to extend *Batson* principles to gender-based strikes. See *Murphy v. State*, 596 So.2d 42 (Ala.Cr.App. 1991), *cert. denied*, *Ex parte Murphy*, 596 So.2d 45 (Ala. 1992); *Fisher v. State*, 587 So.2d 1027 (Ala.Cr.App. 1991), *cert. denied*, 587 So.2d 1039 (Ala. 1991); *Daniels v. State*, 581 So.2d 536 (Ala.Cr.App. 1990), *cert. denied*, 581 So.2d 541 (Ala. 1991); *Dysart v. State*, 581 So.2d 541 (Ala.Cr.App. 1990), *cert. denied*, 581 So.2d 545 (Ala. 1991); *Stariks v. State*, 572 So.2d 1301 (Ala.Cr.App. 1990). He also notes the dissent of Justice Maddox in *Ex parte Murphy, supra*, in which Justice Maddox opined that "when the issue is squarely presented to the United States Supreme Court that Court will expand the *Batson* principle to apply to gender-based strikes in instances where men or women, as a cognizable group, are excluded from jury service solely because of their sex." *Ex parte Murphy*, 596 So.2d at 47 (Maddox, J., dissenting).

In spite of Justice Maddox's opinion, when the issue was squarely presented to this Court by Mr. Murphy's attorneys, this Court denied the petition for writ of certiorari. *Murphy v. Alabama*, 506 U.S. ___ , 121 L.Ed.2d 49, 113 S.Ct. 86 (1992). In that case the male defendant was convicted of sodomy in the first degree and sexual abuse in the second degree, and received consecutive sentences of ten years and life in prison on the two charges. The sole question presented to this Court was whether the equal protection clause of the 14th Amendment prohibits a state prosecutor from peremptorily striking venirepersons strictly on the basis of gender.

This Court also denied certiorari in the *Fisher* case, where the same issue was presented. *Fisher v. Alabama*, ___ U.S. ___ , 117 L.Ed.2d 628, 112 S.Ct. 1486 (1992). Mr. Fisher was convicted of capital murder and was sentenced to life in prison without parole. In that case the District Attorney had acknowledged before the trial court that he had struck certain women from the jury because he did not believe that women are good jurors in a capital case.

Petitioner attempts to suggest that a paternity action is more sensitive to discrimination in the use of peremptory strikes than other actions, implying that although criminal trials and civil litigation are race-neutral and civil litigation is primarily gender-neutral, a paternity action automatically establishes the male as the defendant. This is not true under Alabama's gender-neutral civil

paternity statute. *Code of Alabama 1975*, § 26-17-1 *et seq.* A man presumed to be the father of a child or a man alleging himself to be the father of a child who has no presumed father may bring such an action, making the child's mother the defendant if she wishes to contest the claim. *Code of Alabama 1975*, § 26-17-6; *Pate v. State ex rel. Corkren*, 526 So.2d 30 (Ala.Civ.App. 1988). While such a situation is unusual, just as sexual harassment cases against female defendants are unusual, the *Pate* case is by no means unique in Alabama practice.

The evidence before the jury in this case was overwhelming in support of the jury's verdict. Petitioner was clearly not prejudiced by the makeup of that jury, when the evidence would not have supported any other verdict than the one which the jury returned.

While a paternity case is a very serious matter, placing serious obligations upon the defendant for at least the period of the child's minority, these obligations are the same ones that the parents of children born in wedlock assume, many of them with joy, as an important part of a full, rich life. Clearly the consequences of this jury case do not rise to the seriousness of a guilty verdict in criminal cases such as *Murphy* and *Fisher*. Petitioner has delayed long enough his acceptance of his responsibility for young Phillip's support. He has shown no reason why certiorari should be granted in this case.

II. PETITIONER HAS NOT SHOWN THAT MALES ARE A "COGNIZABLE GROUP" TO WHOM THE PRINCIPLES OF *BATSON V. KENTUCKY* SHOULD APPLY.

The issue which the petitioner attempts to raise is of very recent development. At this point the 9th Circuit Court of Appeals apparently stands alone among the federal circuits in applying *Batson* principles to gender-based strikes. The 4th Circuit Court of Appeals has come down squarely against such application. *U.S. v. Hamilton*, 850 F.2d 1038 (4th Cir. 1988), *cert. denied, Hamilton v. U.S.*, 493 U.S. 1069, 107 L.Ed.2d 1017, 110 S.Ct. 1109 (1990). The 11th Circuit Court of Appeals has ruled that black males, as opposed to blacks generally, are not a cognizable group to which *Batson* principles should be applied. *U.S. v. Dennis*, 804 F.2d 1208 (llth Cir. 1986), *cert. denied, Dennis v. U.S.*, 481 U.S. 1037, 95 L.Ed.2d 814, 107 S.Ct. 1973 (1987). The 7th Circuit Court of Appeals has declined to apply *Batson* principles with regard to black women, noting that *Batson* only "require[s] trial courts to be sensitive to the racially discriminatory use of peremptory challenges." *U.S. v. Nichols*, 937 F.2d 1257, 1262 (7th Cir. 1991), *cert. denied, Nichols v. U.S.*, ___ U.S. ___ , 117 L.Ed.2d 151, 112 S.Ct. 989 (1992).

This Court in *Batson* held that for the defendant to establish a prima facie case of purposeful discrimination in the prosecutor's exercise of peremptory challenges, the defendant must first

show that he is a member of a cognizable racial group and that the prosecutor has exercised peremptory challenges to remove from the venire members of the Defendant' s race. *Batson v. Kentucky*, 476 U.S. 79, 96, 90 L.Ed.2d 69, 89, 106 S.Ct. 1712 (1986). The 9th Circuit Court of Appeals, in applying *Batson* principles to gender-based strikes, did not address the above-cited requirement of *Batson*, but merely declared that males are a constitutionally cognizable group. *U.S. v. De Gross*, 913 F.2d at 1425.

In holding that black males were not a cognizable racial group for *Batson* purposes, the 11th Circuit panel in *U.S. v. Dennis*, 804 F.2d at 1210, set out the following test:

> The test we apply to determine whether appellants are members of a cognizable racial group under *Batson* is the test applied in *Castaneda v. Partida*, 430 U.S. 482, 97 S.Ct. 1272, 51 L.Ed.2d 498, *cited in Batson*, ___ U.S. at ___, 106 S.Ct. at 1723. Such a group is "one that is a recognizable, distinct class, singled out for different treatment under the laws, as written or as applied." *Castaneda*, 430 U.S. at 494, 97 S.Ct. at 1274. The group of blacks generally clearly qualifies under this definition; appellants have failed to show, however, that black males constitute a distinct, recognizable subclass of individuals who

> have been singled out for different treatment under the laws not simply as blacks, but as black males. It would therefore be inappropriate for us to narrow the "cognizable racial group," for present purposes, to include only black males and exclude black females.

Clearly Petitioner in the present case cannot show under the *Dennis* test that males have been singled out for discrimination under the laws of Alabama as written or as applied. Both Alabama's paternity law and its law governing who may be considered for jury service are gender-neutral.

Since *Batson*, this Court has held that a defendant may challenge a prosecutor's race-based peremptory strike whether or not he is a member of the race being excluded (*Powers v. Ohio*, 499 U.S. ___ , 113 L.Ed.2d 411, 111 S.Ct. 1364 (1991)), and that *Batson* principles apply in civil litigation, as well as criminal prosecution. *Edmonson v. Leesville Concrete Company*, 500 U.S. ___ , 114 L.Ed.2d 660, 111 S.Ct. 2077 (1991). However, this Court has not altered or extended *Batson* to apply where a defendant claims discrimination based on factors other than race.

If peremptory strikes are to remain a part of the jury system in the United States, parties must have the right to exercise those strikes against somebody. There are only two genders available for jury selection. If peremptory challenges may not be

used against persons of one gender, then they must be used against persons of the other gender. *U.S. v. De Gross*, itself, illustrates this problem. In that case the appellate court held that the government could prevent a defendant's peremptory challenge of a male venireperson when he was the last remaining male in the venire, but held that the government could not subsequently strike a woman for the sole purpose of getting a "more representative community of men and women on the jury." *U.S. v. De Gross*, 913 F.2d at 1419. In other words, if the government could not come up with a gender-neutral reason for striking any of the six women remaining on the venire, it appears it must strike the sole remaining male which the defendant was forbidden to strike.

In the present case, there is no assertion by the Petitioner that the venire was not selected on a gender-neutral basis. The Petitioner used ten of his eleven peremptory strikes to eliminate women from the jury, and struck a man with his eleventh strike only when it appeared that unless he did so he could not argue that he had an all female jury. If the venire had been comprised of twenty-three men and ten women, rather than twenty-three women and ten men, it is clear that the case would have gone to trial with an all male jury.

If the parties, not having any gender-neutral reasons for striking any of the venire, may not exercise their peremptory strikes against persons of one gender or the other, then peremptory strikes have no meaning. This is clearly not the intent of

the *Batson* decision, which, while requiring racially neutral reasons for challenging prospective jurors of a particular race, generally reaffirms the use of peremptory challenges in jury selection. Males are not a cognizable group to which *Batson* principles should apply.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

RESPECTFULLY SUBMITTED,

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No. 92-1239

IN THE
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OCTOBER TERM, 1992

J. E. B.,
Petitioner,

v.

T. B.,
Respondent.

PROOF OF MAILING AFFIDAVIT

I, Lois N. Brasfield, Attorney of Record for the State of Alabama ex rel. Teresia Bible, Respondent herein, and a Member of the Bar of the Supreme Court of the United States, hereby certify that, on the 14th day of April, 1993, I deposited in a United States mailbox located at the corner of Jackson Street and Monroe Street, Montgomery, Alabama, with first-class postage prepaid, and properly addressed to the Clerk of the Supreme Court of the United States, within the time allowed for filing, the foregoing RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Lois N. Brasfield

SWORN TO AND SUBSCRIBED before me at Montgomery, Alabama, this the 14th day of April, 1993.

NOTARY PUBLIC

MY COMMISSION EXPIRES:

4/18/94

No. 92-1239

IN THE

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OCTOBER TERM, 1992

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

APPENDIX

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APPENDIX A

THIRTY-EIGHTH
JUDICIAL CIRCUIT OF ALABAMA
IN THE CIRCUIT COURT OF
JACKSON COUNTY, ALABAMA

STATE OF ALABAMA, ex rel., TERESIA BIBLE,	)	
PLAINTIFF	)	
vs.	)	CIVIL ACTION
	)	NO. CV-90-314
JAMES EDWARD BOWMAN, SR., DEFENDANT	)	

ORDER

Trial of this cause was commenced on October 21, 1991, and a evidence was submitted to a jury duly and lawfully impanelled and consisting of, to wit: Teresa L. Forrest and eleven other good and lawful persons.

On October 22, 1991 after duly deliberating on the evidence, the jury returned the following verdict:

> "WE, THE JURY, FIND THE ISSUE IN FAVOR OF THE STATE. WE FIND THAT DEFENDANT JAMES E. BOWMAN, SR. IS THE FATHER

OF THE CHILD, PHILLIP RHETT BOWMAN BIBLE.

/s/TERESA L. FORREST
FOREPERSON"

ACCORDINGLY, IT IS ORDERED AND ADJUDGED:

1. That the defendant, James E. Bowman, Sr., is determined to be the father of Phillip Rhett Bowman Bible, born May 16, 1989, and judgment is entered accordingly;

2. That, pursuant to Rule 54 (b), there being no just cause for delay, final judgment is expressly entered on the issue of paternity in this cause;

3. That, the issue of the amount of child support obligation of the defendant for the support and maintenance of the minor child is scheduled for hearing before this court on the 6th day of November, 1991 at 1:30 p.m., and the parties are directed, prior to that date, to supplement child support affidavits and child support guidelines previously filed in this cause, in the event any change in that information have occurred, and the parties shall include the amount of monthly health insurance premium the mother is paying currently for health insurance coverage for the child and shall also include the actual amount of monthly child care expenses the mother is incurring for the child and whether such child care expense is in a home or day care center.

ORDERED this the 23rd day of October, 1991.

/s/Robert L. Hodges
Robert L. Hodges,
Circuit Judge

John Porter, III, Attorney
William Tally, Assistant District Attorney

APPENDIX B

THIRTY-EIGHTH
JUDICIAL CIRCUIT OF ALABAMA
IN THE CIRCUIT COURT OF
JACKSON COUNTY, ALABAMA

STATE OF ALABAMA, ex rel., TERESIA BIBLE,	)	
PLAINTIFF	)	
vs.	)	CIVIL ACTION
	)	NO. CV-90-314
JAMES E. BOWMAN, SR., DEFENDANT	)	

FINAL ORDER

Income affidavits having been submitted to the court for each party, the child support obligation of the defendant James E. Bowman, Sr., for the support and maintenance of Phillip Rhett Bible, the child of the parties, is fixed at $415.71 per month, in accordance with the attached child support guideline form, and the defendant is to pay that amount, together with the clerk's administrative costs, to the clerk of this court on the 15th of each month during the minority and dependency of the child, the first payment to be made no later than November 15, 1991.

It is further ORDERED that the defendant be

given credit for all child support payments made since December 6, 1990 pursuant to the amended order of Judge Ralph H. Grider of the District Court of this circuit, and that, in the event the defendant shall not have paid the minimum amount of the child support obligation fixed by this order each month since Judge Grider's order, the defendant forthwith pay that to the clerk of this court.

All child support payments are to be disbursed by the clerk to Teresia Bible, the mother of the child.

Costs are taxed to the defendant.

ORDERED this the 8th day of November, 1991.

/s/Robert L. Hodges
Robert L. Hodges,
Circuit Judge

John Porter, III, Attorney
William Tally, Assistant District Attorney

APPENDIX C

J.E.B.

v.

STATE of Alabama ex rel. T.B.

2910210.

Court of Civil Appeals of Alabama.

June 5, 1992.

Rehearing Denied July 17, 1992.

Certiorari Denied Oct. 23, 1992

Alabama Supreme Court 1911717.

L. CHARLES WRIGHT, Retired Appellate Judge.

The State of Alabama, on behalf of T.B. (mother), filed a complaint for paternity and child support against J.E.B. (father) in the District Court of Jackson County. After a hearing the district court entered an order adjudicating paternity and ordered the father to pay child support. The father filed notice of appeal to the circuit court. A jury trial was held. The jury returned a verdict in favor of the mother. The trial court entered an order accordingly. The father appeals.

Initially the father asserts that the trial court erred in overruling the father's objection to the State's peremptory jury strikes based on his

allegation that the State's strikes were based entirely on gender.

The father insists that the State improperly used its peremptory strikes to purposefully eliminate men from the jury. He suggests that such actions were in violation of his rights to equal protection and due process. He requests that this court extend the *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct.1712, 90 L.Ed.2d 69 (1986), principle, which prohibits peremptory strikes based solely upon race, to include gender-based strikes.

This issue has previously been addressed by the court of criminal appeals and the supreme court. *Fisher v. State*, 587 So.2d 1027 (Ala.Crim.App.), *cert. denied* 587 So.2d 1039 (Ala. 1991); *Daniels v. State*, 581 So.2d 536 (Ala. Crim. App. 1990), *cert. denied* 581 So.2d 541 (Ala. 1991); *Dysart v. State*, 581 So.2d 541 (Ala.Crim.App. 1990), *cert. denied* 581 So.2d 545 (Ala. 1991). The supreme court recently revisited the issue in *Ex parte Murphy*, 596 So.2d 45 (Ala. 1992), and declined to extend the *Batson* principle to gender-based strikes. We must follow the decisions of the supreme court. § 12-3-16, Code 1975.

The father next contends that the blood test results should have been excluded because the State failed to establish a proper chain of custody. He specifically asserts that the phlebotomist's failure to testify was fatal to the admissibility of the blood test results.

Dr. Leigh Ann Harman, the supervisor of the University of Alabama at Birmingham Immunogenetics/DNA Diagnostic Laboratory, testified that along with the blood samples she received an Immunogenetics/DNA Diagnostic Laboratory Paternity Chain of Custody Document. The document was developed in order to allow the supervisor to confirm the chain of custody without having to bring numerous laboratory personnel to court. Dr. Harman thoroughly discussed the document and its safety devices. She testified in detail as to her laboratory's procedures for drawing blood samples and assuring proper identification of both the individuals having the test and the blood samples drawn from those individuals. She testified that once the blood samples were received by the laboratory they were checked for any sign of tampering. She stated that there was no sign of tampering, that the box was taped, the tape was intact, and the tape was initialed by the person who sealed and delivered it.

We find that a proper chain of custody was sufficiently established by Dr. Harman's testimony. *Lyle v. Eddy*, 481 So.2d 395 (Ala. Civ. App. 1985).

The father asserts that the trial court erred in allowing into evidence the results of the DNA test without first establishing that the test "met the requirements of the recent supreme court holding in the case of *Ex parte Perry*, 586 So.2d 242 (Ala. 1991)."

Ex parte Perry pertains to the admissibility of DNA test results in a forensic setting. That case clearly distinguishes between forensic testing and clinical testing (which we have in this case). The strict admissibility requirements of *Ex parte Perry* are not applicable in a paternity action.

The judgment of the trial court is affirmed.

The foregoing opinion was prepared by Retired Appellate Judge L. CHARLES WRIGHT while serving on active duty status as a judge of this court under the provisions of § 12-18-10(e), Code 1975, and this opinion is hereby adopted as that of the court.

AFFIRMED.

All the judges concur.